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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No._____

GEORGE LIGHT,

Petitioner,

vs.

ANGELINA E. MURPHY,
Guardian for THOMAS J. MURPHY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

REPORT OF OPINION BELOW

The opinion of the United States District Court for the Southern District of Florida [Record, pp. 42, 43] was not reported.

The opinion of the United States Court of Appeals for the Fifth Circuit [Record, pp. 142-147] is reported as *Murphy v. Light*, 224 F. 2d 944 (5th Cir. 1955).

JURISDICTION

1. The judgment of the court of appeals sought to be reviewed was dated August 18, 1955 and was entered the same day.

2. An order was entered dated September 28, 1955, denying a petition for rehearing.

3. The statutory provisions believed to confer on this Court jurisdiction to review the judgment in question by writ of certiorari are:

28 U.S.C. § 1254 (1) (1948) and
28 U.S.C. § 2101 (c) (1949).

QUESTION PRESENTED FOR REVIEW

WHETHER A SEAMAN SHOULD BE ENTITLED TO MAINTENANCE AND CURE FROM THE OWNER OF A PLEASURE BOAT WHEN THE SEAMAN, WITHOUT AUTHORITY, CONVERTS AND COMMANDEERS THE BOAT FOR HIS OWN PURPOSE AND WHILE ENGAGED IN THIS INDEPENDENT FROLIC IS INJURED BECAUSE HE THREATENED, INSULTED AND CURSED A SEAMAN FROM ANOTHER SHIP WHO HIT HIM?

STATEMENT OF THE CASE

MURPHY,* Respondent, is seeking maintenance and cure from LIGHT, Petitioner.

*The name "MURPHY" as used in this petition is synonymous with THOMAS J. MURPHY, the original Libelant for whom ANGELINA E. MURPHY is now guardian.

LIGHT, the owner of a twenty-six foot Steelcraft Cruiser, the "JESSE II", contracted with MURPHY, who held himself out to be an experienced seaman, for MURPHY to bring the "JESSE II" from New York to Miami, Florida.

After agreeing to sail the ship by himself, without passengers or other crewmen, and to refrain from towing other vessels, MURPHY was paid the agreed upon compensation by LIGHT. [Record, pp. 43, 212]

Two or three days out of New York, about twenty minutes and two miles from Cape May, New Jersey, MURPHY, without LIGHT'S knowledge or consent, began towing a seventy-five foot Schooner named "MARBARA" with LIGHT'S twenty-six foot cruiser. [Record, p. 231] MURPHY'S "excuse" for towing was the claim that he came to the aid of a vessel in distress. [Record, p. 67] Both the district court and the court of appeals refuted this contention; the district court finding that the towing was the result of a personal whim of MURPHY. [Record, pp. 42, 43]

After twelve hours and twenty miles of towing, upon reaching the Chesapeake and Delaware Canal, it was decided by MURPHY and JACOBSON, the Captain of the Schooner, to separate the vessels and to proceed independently. The tow line was cast off, but became entangled in the screw of the Schooner "MARBARA". [Record, p. 129] Although this minor mishap did not disable the "MARBARA" and, notwithstanding that the "JESSE II" was in nowise effected, MURPHY began to berate OLSEN, the mate of the "MARBARA", in the presence of OLSEN'S superior officer. [Record, p. 129] Although

admittedly aware of OLSEN'S growing agitation, [Record, p. 236] MURPHY proceeded to call him a "cocksucker", a "disgrace to the sea" a "no good sailor" and threatened to "call the Coast Guard down" on him and to get his gun and shoot him. [Record, pp. 35, 36, 129]

The mate, who had hitherto remained aboard his own ship, thus incited, jumped aboard the "JESSE II" and struck MURPHY. In this way were delivered the injuries which are the basis of this suit.

The district court in denying maintenance and cure found that these injuries were caused by MURPHY'S own gross misconduct and that they were not incurred in the service of the "JESSE II". [Record, pp. 42, 43] The court of appeals reversed the district court without taking further testimony. Apparently admitting that the towing was improper, the court of appeals nevertheless found that MURPHY had not "entirely" left the service of the ship. [Record, p. 145] Although admitting that the assault by OLSEN was provoked by the insulting language used by MURPHY, it concluded that MURPHY'S violent language was not such "gross and wilful misconduct" (sic) as would forfeit his right to maintenance and cure. [Record, pp. 145, 147]

Previously, in this case, the district court had granted a Motion for a Summary Judgment in favor of Petitioner. On appeal, reported as *Murphy v. Light*, 211 F. 2d 824 (5th Cir, 1954), the court of appeals reversed the district court and at that time commanded the district court to take testimony at a trial of the cause.

BASIS OF JURISDICTION IN COURT OF FIRST INSTANCE

The court of first instance, the United States District Court for the Southern District of Florida, took jurisdiction by virtue of the authority contained in Article III, Section 2, Clause 1, of the United States Constitution.

REASONS FOR THE ALLOWANCE OF THE WRIT

I. The Court of Appeals Rendered a Decision in Conflict with Decisions of Other Courts of Appeals on the Same Matter.

The other courts of appeals have held that where a seaman voluntarily provokes an attack, he is the author of his own misfortune and is not entitled to recover maintenance and cure because of his wilful misbehavior. *Meyer v. Dollar S.S. Line*, 49 F. 2d 1002 (9th Cir. 1931), *Jackson v. Pittsburgh S.S. Co.*, 131 F. 2d 668 (6th Cir. 1942); *Barlow v. Pan Atlantic S.S. Corp.*, 101 F. 2d 697, 698 (2d Cir., 1939); *Bonsalem v. Byron S.S. Co.*, 50 F. 2d 114 (2d Cir., 1931); *Brailas v. Shepard S.S. Co.*, 152 F. 2d 849 (2d Cir., 1945) *cert. denied* 327 U. S. 807 (1946); *Fowler v. American Mail Line, Ltd.*, 69 F. 2d 905 (99th Cir., 1934); *Lortie v. American Hawaiian S.S. Co.*, 78 F. 2d 819 (9th Cir., 1935); *Lykes Bros. S.S. Co. v. Grubaugh*, 128 F. 2d 387 (5th Cir., 1942); *The S.S. Berwindglen*, 88 F. 2d 125, 127 (1st Cir., 1937).

In the instant case, the Court of Appeals for the Fifth Circuit affirmed the findings of the district court which held that: ". . . The assault by OLSEN was provoked by the insulting language used by MURPHY". [Record p. 145]. Then, the court of appeals, in irrecon-

cilable conflict with the other courts of appeals, imposed an additional standard: not only must the attack have been provoked, but in addition, the assault must be *justified.* [Record pp. 146, 147] Contra: *Kable v. United States,* 175 F. 2d 16 (2d Cir., 1949) and *Jones v. Lykes Bros. S.S. Co.,* 204 F. 2d 815 (2d Cir., 1953).

The court then compounded its error by ruling that seamen are less likely to use their fists than fastidious and sheltered people. [Record, p. 146] This conclusion, we submit, is also in conflict with the opinion written by Judge Learned Hand in the case of *Jones v. Lykes Bros. S.S. Co.,* 204 F. 2d 815 (2d Cir., 1953), in which the court said (at p. 817): "Sailors . . . are more apt to use their fists than office employees; what will seem to sedentary and protected persons an insufficient provocation for a personal encounter, is not the measure of the 'disposition' of (seamen) . . . "

Another error of the court of appeals was its ruling that MURPHY had not "entirely" departed from the service of his ship, [Record, p. 145] although the court tacitly admitted that the towing was improper.

MURPHY committed the following wilful acts:

(a) He commandeered another's ship for his own purpose, [Record, p. 43], and

(b) He provoked another seaman into assaulting him. [Record, pp. 43, 145].

It cannot be denied that but for MURPHY'S original wilful act of wrongdoing, MURPHY could not have been injured.

In the case of *Jackson v. Pittsburgh*, 131 F. 2d 668 (6th Cir., 1942), the Court said, at p. 670:

> " . . . When a seaman, by his own volition, creates an extraneous circumstance, he brings about an intervening cause that directly affects his relation to his employers and to his ship. He is responsible for such intervening cause if it consists of his own wilful misconduct . . ."

II. The Court of Appeals Decided a Federal Question in Such a Way as to Be in Conflict With Applicable Decisions of This Court.

The Supreme Court has consistently held that a seaman will not recover maintenance and cure if:

(a) His injury was incurred otherwise than in the service of his ship, or

(b) His injury was due to his own wilful act, default or misbehaviour. *Warren v. United States*, 340 U.S. 523 (1951); *Aguilar v. Standard Oil Co.*, 318 U. S. 724 (1943).

In the instant case, the court of appeals cited the *Warren* case as its authority. Turning to the *Warren* case we find this Court defining (at p. 528) ". . . wilful act, default or misbehaviour . . ." as ". . . gross negligence *or* wilful disobedience of orders . . ." (emphasis supplied). The court of appeals then omitted the word "negligence", changed "or" to "and" and did thus create a new, almost impossible standard, to-wit: "gross and wilful misconduct." [Record, p. 145]

The fear expressed by Judge Learned Hand in the *Jones* case (supra) (at p. 816) ". . . else it would follow that a ship owner is liable for any injuries resulting from every sailors' brawl . . .", has in fact become a reality if the opinion of the Court of Appeals for the Fifth Circuit is permitted to stand.

III. The Court Departed From the Accepted and Usual Course of Judicial Proceedings.

The court of appeals failed to hold that the findings of the district court were against the preponderance of the evidence, took no new testimony, and yet ignored the district court's findings. In *Koehler v. United States*, 187 F. 2d 933 (7th Cir., 1951), at page 936, the court clearly stated the rule, in this language:

> "Hundreds of citations might be given where the rule is categorically stated that on an appeal in admiralty there is a trial de novo; however the qualification of that general rule is just as widely recognized, and that is, that *the findings of the district court will be accepted by the appellate court unless clearly against the preponderance of the evidence* . . . Such findings will not be disturbed unless clearly erroneous . . ." (Emphasis supplied and citations omitted.)

Respectfully submitted,

DANIEL NEAL HELLER,
Attorney for Petitioner.

APPENDIX

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 15,434

ANGELINA E. MURPHY, as guardian of THOMAS J MURPHY,

Appellant,

versus

GEORGE LIGHT,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA.

(August 18, 1955)

Before RIVES and CAMERON, Circuit Judges, and DAWKINS, District Judge.

RIVES, Circuit Judge: This libel in personam for seaman's maintenance and cure under the general maritime law was brought by Thomas J. Murphy against appellee George Light, owner of the 26′ Steelcraft Cruiser,

"Jesse II." On a former appeal, a "summary judgment" for the defendant, appellee, was reversed and the cause remanded for trial. *Murphy v. Light*, 5th Cir., 211 F. 2d. 824. The trial was conducted under a considerable handicap to both parties due to the fact that Murphy had become non-compos, and his wife, appointed as his guardian, had been substituted in his stead. The district court made findings of fact and conclusions of law,[1] and based thereon, again dismissed the libel.

---

[1] "FINDINGS OF FACT:

"1. The Court has jurisdiction of the parties and the subject matter.

"2. The libelant, Murphy, was employed by the respondent to bring the Yacht JESSE from New York to Miami, Florida.

"3. On December 9, 1952, the libelant had another vessel in tow on the Intercoastal Waterway.

"4. The libelant had taken the vessel in tow to allow him the company of the other crew during his trip, as he was alone aboard the JESSE.

"5. Murphy's proctor makes claim that the JESSE was in distress and had lost her compass and that the towing operations were, therefore, incident to the voyage of the JESSE, and hence the dispute between Olson and Murphy was directly connected with the JESSE's voyage. With this I do not agree. Jacobsen, the master of the MARBARA, did take over the wheel of the JESSE when, after the first fastening of the tow line, the JESSE was apparently off course. But a second fog set in and incident to dropping anchor with Jacobsen at the wheel of the JESSE, Murphy was at the stern of the JESSE and was in constant conversation with Olson, who was hauling the line on the MARBARA. The assault by Olson was provoked by the insulting language used by Murphy toward Olson. The JESSE is not to be held liable for maintenance and cure of Murphy, who suffered the assault by Olson under these circumstances.

"6. The MARBARA was not in distress, which brought about the towing by the JESSE. Murphy's contract with Light contained no provision as to towing another vessel, even in distress. Though under the law of the sea, the distress of the MARBARA and the towing under those conditions would lend some color to Murphy's claim that the passing of insulting language by Murphy, with the assault by Olson, was incident to the voyage. But such is not the case. Murphy was evidently lonely. He was the sole person on the JESSE and he evidently wanted company in this part of the voyage. The towing was brought about by the personal whim of Murphy.

"7. The injury suffered by Murphy and the resulting hospitalization were due solely to the original libelant's own gross misconduct and they did not occur in the service of the Yacht JESSE.

"8. The libel should be dismissed, without cost to the respondent.

"CONCLUSIONS OF LAW:

"1. The libel should be and the same is hereby dismissed.

"2. The costs of this action should be assessed by the Clerk against the libelant."

In addition to the facts found by the district court, the following facts, testified to by Olsen, the seaman who committed the assault on Murphy, were not disputed:

> "We proceeded up river for about one hour and then fog set in. As the Jesse was towing us, she seemed to be going in all kinds of directions. First she went south, then she went north and she was proceeding in all directions. We blew our horn and made Murphy understand that he was not going on the right course. We got the answer that his compass was out of order. We went alongside the Jesse and Captain Jacobsen entered Murphy's boat with a spare compass and then Jacobsen took over Murphy's boat and piloted up the river."

Jacobsen, the master of the Marbara, did not testify. There was no dispute that Murphy incurred some expenses for maintenance and cure of the injuries suffered in the assault, though the extent of such injuries and consequent expenses is left in considerable doubt by the frank testimony of Murphy's wife and guardian:

> "Q. When did this nervous condition begin? When is the first time you noticed it?
> "A. This kind of trouble I have been having with him for the past two years, since I come down here to Florida. That is about—going on two years.
>
> "Q. Did you notice that condition in him prior to the time he was on the JESSE?
> "A. He always was able to take care of himself and support us in the proper manner, but now we are having so many cases where we go back

> and forth into court on all of these accidents that have happened to him, one right after the other for the past eighteen months."

There is no denial that, though Murphy was the master of the vessel, he came within the class of seamen entitled to maintenance and cure under the general maritime law. See *Warner v. Goltra*, 293 U.S. 155, 158. It is clear that at the time of the assault, Murphy had not entirely departed from the duties of his employment. He was still on board and in the service of the vessel "Jesse II". Regardless of the original cause of the tow, the Captain of the Marbara had been rendering service to the "Jesse II" at the wheel with his spare compass.

On the other hand, there is ample evidence to sustain the finding of the district court that, "The assault by Olson was provoked by the insulting language used by Murphy." The issue narrows as to whether Murphy's insulting and inflammatory language was such gross and willful misconduct as to forfeit his right to maintenance and cure.

As recently stated by the Supreme Court in *Warren v. United States*, 340 U.S. 523, 528:

> "The District Court held that petitioner's degree of fault did not bar a recovery for maintenance and cure. The Court of Appeals thought otherwise. The question is whether the injury was 'due to the wilful act, default or misbehaviour' of petitioner within the meaning of Art. 2, paragraph 2(b) of the Convention. The standard prescribed is not negligence but wilful mis-

> behavior. In the maritime law it has long been held that while fault of the seaman will forfeit the right to maintenance and cure, it must be 'some positively vicious conduct—such as gross negligence or willful disobedience of orders.' The Chandos, 6 Sawy. 544 549-550; The City of Carlisle, 39 F. 807, 813; The Ben Flint, 1 Biss. 562, 566. And see Reed v. Canfield, 1 Sumn. 195, 206. In Aguilar v. Standard Oil Co., 318 U.S. 724, 731, we stated the rule as follows: 'Conceptions of contributory negligence, the fellowservant doctrine, and assumption of risk have no place in the liability or defense against it. Only some wilful misbehavior or deliberate act of indiscretion suffices to deprive the seaman of his protection.' "

Though enforcement of a shipowner's broad obligation for maintenance and cure may appear harsh in this instance, we think the rule of the Warren case, *supra*, was purposely adopted and should be liberally applied in favor of a seaman, as a ward of admiralty, who sustains injury while in the service of a vessel. Giving full credence to the testimony as to Murphy's having used insulting language toward Olsen, we think such impropriety on his part was insufficient justification for the personal assault by Olsen resulting in the severe injuries claimed, especially in view of Murphy's undisputed status as master of the "Jesse II" and the testimony contradicting respondent's contention that he had completely departed from the service of that vessel when the assault occurred. We feel a compelling reluctance to apply that same rigid standard of parlor language and etiquette between seafaring men which the more fastidious and sheltered among us would comfortably require, and particularly to hold,

as appellee would apparently have us do here, that their failure to comply with that standard in their relations with one another constitutes sufficient provocation to justify or condone personal violence, so that injury resulting therefrom would not render the shipowner responsible for maintenance and cure. See *Boudoin v. Lykes Bros. S.S. Co.*, 348 U.S. 336, 339-340, reversing *Lykes Bros. S.S. Co. v. Boudoin*, 5th Cir., 211 F. 2d. 618. Cf. *Jones v. Lykes Bros. S.S. Co.*, 2nd. Cir., 204 F. 2d. 815, 817. We conclude, therefore, that under the circumstances of this case the insulting language used by Murphy was not such gross and willful misconduct as would forfeit his right to maintenance and cure for any injury which may have resulted from Olsen's assault. *Warren v. United States, supra*, at p. 528.

We think that the district court has again misapprehended the extent of a seaman's right to maintenance and cure. The judgment is, therefore, reversed and the cause remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

A True Copy:
Teste:

Clerk of the United States Court of Appeals for the Fifth Circuit.

56/28

Supreme Court, U.
FILED
JAN 14 1956
HAROLD B. WILLEY, Clerk

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 592

GEORGE LIGHT,

Petitioner,

vs.

ANGELINA E. MURPHY,
Guardian for THOMAS J. MURPHY,

Respondent.

RESPONDENT'S REPLY BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 592

GEORGE LIGHT,

Petitioner,

vs.

ANGELINA E. MURPHY,
Guardian for THOMAS J. MURPHY,

Respondent.

RESPONDENT'S REPLY BRIEF IN REPLY TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS

QUESTION FOR REVIEW

The question suggested for review does not come within the provisions of Rule 38 of the Supreme Court. Rule 38 of the revised rules of the Supreme Court of the United States adopted February 13, 1939, effective February 27, 1939, as amended to January 22, 1953, sets forth the basis upon which the review on a writ of certiorari of a decision of a circuit court of appeals will be granted in a case of this kind.

STATEMENT OF THE CASE

The controversy in question is predicated on a claim for maintenance and cure for a seaman injured as a result of the assault on him, aboard his vessel, by a seaman from another vessel.

Respondent[1] was the master and sole personnel of the pleasure yacht, "JESSE II." In the course of a rescue operation of the yacht "MARBARA," resondent insulted a crew member of the yacht "MARBARA" in criticizing said crewman's work in handling the tow line used in the rescue operation. The District Court held that such rescue operation was without the scope of respondent's duties and that the insulting language was such vice as to per se preclude respondent from any right to recovery. The Court of Appeals for the Fifth Circuit held that such findings as to resondent's right to maintenance and cure were clearly erroneous on the grounds that the respondent had returned to his vessel's service and reversed the decree, granting recovery of maintenance and cure.

ARGUMENT

POINT 1

THERE IS NO SHOWING OF ANY SPECIAL AND IMPORTANT REASON FOR REVIEWING THE PROPOSED QUESTION.

There is no showing of a conflict with a decision of another circuit court of appeals in the same matter. The cases cited by respondent are not persuasive for two reasons:

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[1] The action is brought by the guardian, ANGELINA E. MURPHY, by reason of the fact that respondent is now mentally incompetent following brain damage in the assault in question.

1. The authorities cited by the petitioner on Page 5 of his brief refer to cases decided prior to this Court's decisions in *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943), and *Warren v. United States*, 340 U.S. 523 (1951). The petitioner cites *Jones v. Lykes Brothers S.S. Co.*, 204 F.2d 816 (2nd Cir. 1953), as authoritative for his petition. The *Jones case* was not an action for maintenance and cure. It was an action under the Merchant Marine Act of 1920, Section 33, the Jones Act, Title 46 U.S.C.A. Section 688, for negligence of the shipowner. All maintenance and cure had been paid by Lykes Brothers prior to the institution of that action.

2. Said cases deal with subject matters entirely separate and apart from the facts in the case at bar.[2]

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[2] *Meyer v. Dollar S.S. Line*, 49 F.2d 1002 (9th Cir., 1931) (This case involved injuries suffered in a wrestling match during free time).

Jackson v. Pittsburgh S.S. Co., 131 F.2d 668 (6th Cir., 1942) (This case involves a seaman who jumped from a ship rather than use the gangway).

Barlow v. Pan Atlantic S.S. Corp., 101 F.2d 697; 698 (2nd Cir., 1939) (This case involves a drunken seaman who fell off a ladder).

Bonsalem v. Byron S.S. Co., 50 F.2d 114 (2nd Cir., 1931) (This was not an action for maintenance and cure).

Brailas v. Shepard S.S. Co., 152 F.2d 849 (2nd Cir., 1945) *cert. denied*, 327 U.S. 807 (1946). (This was not an action for maintenance and cure).

Fowler v. American Mail Line, Ltd., 69 F.2d 905 (9th Cir., 1934) (This was not an action for maintenance and cure).

Lortie v. American Hawaiian S.S. Co., 78 F.2d 819 (9th Cir., 1935) (This case involved a drunken brawl).

Lykes Bros. S.S. Co. v. Grubaugh, 128 F.2d 387 (5th Cir., 1942). (Maintenance and cure was allowed in this case, although general damages were denied).

The S.S. Berwindglen, 88 F.2d 125, 127 (1st Cir., 1937) (This case involved a drunken seaman).

Kable v. United States, 169 F.2d 90 (2nd Cir., 1948).

Kable v. United States, 175 F.2d 16 (2nd Cir., 1949) (The district court found that Kable was drunk, was the aggressor, and that the assailant was in the course of his duties in attempting to keep peace and quiet on the vessel. Maintenance and cure was paid up to trial).

There is no question of local law involved either in conflict or applicable with local decision.

There is no important question of federal law involved, settled or otherwise.

There is no conflict with any applicable decision of the Supreme Court of the United States, if anything, the decision of the court below is in conformity with the principles laid down by this court.[3]

There is no such departure of jurisdictional proceedings or need for supervision by this court of the lower court's right to decide whether a district court decision was clearly erroneous on the evidence and law presented.

POINT 2

THE COURT OF APPEALS DID NOT REVERSE ANY CONTRADICTED FINDING OF FACT.

In reversing the Trial Judge's decree, the Court of Appeals did not reverse any controverted finding of fact. The Court of Appeals merely reversed the Trial Judge's

---

[3] *Aguilar v. Standard Oil Co.*, 318 U.S. 724 (1943) (This case held that a seaman injured off his ship is entitled to maintenance and cure).

Warren v. United States, 340 U.S. 523 (1951) (A seaman who fell from the second floor of a dance hall was entitled to maintenance and cure).

Farrell v. United States, 336 U.S. 511 (1949) (An intoxicated seaman who overstayed his shore leave and was injured while returning to his vessel is entitled to maintenance and cure).

Boudoin v. Lykes Bros. S.S. Co., 348 U.S. 336 (1955) (A seaman entitled to maintenance and cure for injuries suffered when hit over the head by another seaman with his own bottle of cognac on board the ship).

Reed v. Canfield, 1 Sumn. 195; Fed. Cas. No. 11, 641 (1832). (A seaman on unauthorized shore leave declared back in the service of his vessel while attempting to return to the vessel).

erroneous legal conclusions, which were based on uncontroverted evidence which he misconceived. *McAllister v. United States*, 348 U.S. 19 (1954). *See also, Reed v. Canfield, supra; Farrell v. United States, supra.*

CONCLUSION

It is respectfully submitted that the writ of certiorari to the Court of Appeals for the Fifth Circuit should be denied.

Respectfully Submitted

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a copy of the Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit was mailed to Daniel Neal Heller, Attorney for Petitioner, 810 Ainsley Building, Miami 32, Florida,

this ..... day of January, 1956.

.....